Supreme Court, U.S.
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No. 93-1206

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1993

BEXAR COUNTY APPRAISAL REVIEW BOARD
and BEXAR COUNTY APPRAISAL DISTRICT,
PETITIONERS

v.

FIRST BAPTIST CHURCH OF SAN ANTONIO
and VALERO REALTY COMPANY,
RESPONDENTS

On Petition for Writ of Certiorari to the Fourth Court of Appeals District of Texas, San Antonio

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PETITIONERS' REPLY TO BRIEF IN OPPOSITION and APPENDIX, VOL. III

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Questions Presented for Review

Petitioners' substantive questions of law have been presented for review and addressed in their *Petition for Writ of Certiorari*. This *Reply Brief* addresses only the jurisdictional questions first raised in *Respondents' Brief in Opposition* contesting Petitioners' standing to challenge the constitutionality of a state statute.

PARTIES TO THE PROCEEDINGS

Petitioners:

A. Bexar County Appraisal Review Board (a political subdivision of the State of Texas);

B. Bexar County Appraisal District (Walter Stoneham, Chief Appraiser), a political subdivision of the State of Texas.

Respondents:

A. First Baptist Church of San Antonio, a non-profit religious organization;

B. Valero Realty Company, a Delaware corporation a wholly owned subsidiary of Valero Energy Corporation, a Delaware corporation.

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OPINION OF THE COURT BELOW

The opinion of the Texas Court of Appeals is reported at 846 S.W.2d 554 (Tex. App. - San Antonio 1993, writ denied). (App. Vol. I, p. 1a.) The Order of the Texas Supreme Court, dated June 3, 1993, denying discretionary review of the Fourth Court of Appeals' decision on remand on the federal questions is unreported. (App. Vol. II, p. 52a.) The Order of the Texas Supreme Court dated October 27, 1993, denying Petitioners' Motion for Rehearing is unreported. (App. Vol. II, p. 54a.)

JURISDICTIONAL STATEMENT
(Restated)

The Texas Court of Appeals directly addressed the same federal questions presented to this Court for review. In so doing, the Texas Court decided these questions in a manner repugnant to the Constitution and in a way that directly conflicts with the decisions of this Court. (App. Vol. I, pp. 3a-7a.) The Texas Supreme Court refused to review the Appeal Court's decision. (App. Vol. II, pp. 52a-55a.)

Accordingly, jurisdiction is invoked pursuant to *28 U.S.C. §1257* and U.S. Sup.Ct. Rule 10.1(c), *Considerations Governing Review of Writ of Certiorari*, 28 U.S.C.

STATEMENT OF THE CASE

Respondents have misstated or mischaracterized the following facts under their Statement of the Case.

Respondents have characterized the parking lots in question as "the Church's two primary parking lots". (*Respondents' Brief in Opposition*, p. 3) The record reflects, however, that the Church owns other parking lots, next to the sanctuary, which the Church does not lease to Valero or otherwise use for commercial purposes. These sanctuary lots are exempt from property taxes.

Respondents then state that "all income" derived from the Church's "arrangement with Valero" is "devoted to the upkeep and maintenance of the Church complex as a whole". This is a misstatement. The Valero lease requires that Valero be responsible for all upkeep and maintenance on the parking lots it leases from the Church. Respondents maintain that in each of the tax years in question the Church was required to pay the taxes due the various taxing units. Under the terms of the lease, the Church was required to pay very little tax; Valero was the party required to pay the majority of the taxes due on the property. (App. Vol. I, p. 12a, n.6.)

JURISDICTIONAL ARGUMENTS

Petitioners Are The Proper Parties To Challenge The Constitutionality Of The State's Tax Exemption Laws.

The Appraisal District, through its Chief Appraiser, is specifically charged by state statute with enforcing the exemption laws of this state. *Tex. Tax Code Ann. §11.45(a) (Vernon 1992)* (App. Vol. II, p. 102a) Similarly, the Appraisal Review Board has a duty under *Tex. Tax Code Ann.* §41.01(5) (Vernon Supp. 1994) (App. Vol. III, p. 105a) to determine whether exemptions have been improperly granted.

Texas Courts Have Specifically Upheld The Authority Of The State's Appraisal Districts And Appraisal Review Boards To Challenge The Constitutionality Of The Tax Laws They Are Statutorily Bound To Enforce.

The Texas Court of Appeals in *Aransas County Appraisal Review Bd. v. Texas Gulf Shrimp Co.*, 707 S.W.2d 186 (Tex. App. - Corpus Christi 1986, writ ref'd n.r.e.), specifically rejected the same standing arguments Respondents raise here. The Court, holding that the appraisal authorities were the proper parties to challenge the constitutionality of the *Property Tax Code*, stated:

> [t]o hold otherwise, in reality, would leave no other likely party to challenge unconstitutional exemption statutes. Certainly the taxpayers

> receiving the exemption would not be likely to bring such a challenge...
>
> *Aransas County*, 707 S.W.2d at 196. (emphasis added)

Similarly, in *Nueces County Appraisal Dist. v. Corpus Christi Peoples Baptist Church, Inc.*, 860 S.W.2d 627 (Tex. App. - Corpus Christi 1993, no writ) the church argued, as Respondents do here, that the Appraisal District, as an agent or political subdivision of the State, did not have standing to challenge the constitutionality of one of the provisions of the State's *Property Tax Code*. The court held:

> ...appellants are the proper parties to bring such a challenge, inasmuch as these entities are the ones charged with duties under §11.433 (*Late Application for Religious Exemptions*) which would effectuate an unconstitutional legislative scheme. We hold that the County (Appraisal District, Appraisal Review Board, and County) has standing to bring this constitutional attack.
>
> *Nueces County*, 860 S.W.2d at 630. (parentheticals added).

Finally, the Texas Supreme Court in *City of Weatherford v. Parker County*, 794 S.W.2d 33 (Tex. 1990) upheld the right of a school district, as a political subdivision, to challenge a provision of the *Property Tax Code* as unconstitutional.

Petitioners Have No Duty To Notify The Texas Attorney General Of A Constitutional Issue Raised In The Required Statutory Manner.

Respondents claim Petitioners, in order to "properly challenge" the constitutionality of a state statute, must notify the Texas Attorney General of their challenge through a Declaratory Judgment proceeding. (*Respondents' Brief in Opposition* p. 4.) Petitioners have no such duty. Petitioners properly raised and preserved the federal questions decided by the Texas Court of Appeals because:

(1) The *Property Tax Code* is the exclusive statutory remedy to protest any of the Code's provisions. §42.09, *Tex. Tax Code Ann.* (Vernon 1992) (App. Vol. III, p. 105a.) The *Property Tax Code* imposes no duty on

Petitioners to notify the Texas Attorney General when the constitutionality of a statute is raised in a statutory proceeding brought under the *Property Tax Code*. See, *Alexander Ranch, Inc. v. Central Appraisal Dist.*, 733 S.W.2d 303 (Tex. App. - Eastland 1987, writ ref'd n.r.e.), *certiorari denied* 108 S.Ct. 2005, 486 U.S. 1026, 100 L.Ed.2d 236, where the taxpayer claimed a provision of the *Property Tax Code* violated of the Fourteenth Amendment to the United States Constitution. The Appraisal District challenged the taxpayer's right to do so because the lawsuit was not filed under the Uniform Declaratory Judgments Act. *Tex. Civ. Prac. & Rem. Code Ann.* §37.001 et seq. (Vernon 1986) (Respondents' App. B, pp. 44a-45a.) The Attorney General was not notified of the constitutional challenge. The Court held that since the taxpayer filed a statutory petition, as specifically required by the *Property Tax Code*, "no notice to the Attorney General was required." *Alexander Ranch*, 733 S.W.2d at 305.

(2) Even if state law required Petitioners to file a Declaratory Judgment action, notification to the State's Attorney General is required only where the statute is alleged to be unconstitutional on its face. Petitioners' constitutional challenges were raised in an "as applied" argument.

(3) Petitioners, in advancing their "as applied" arguments in state court, were entitled to rely on state law which requires state courts to interpret statutes in a constitutional manner. Code Construction Act, Chapter 311, *Tex. Gov't Code Ann.* §§311.021 and 311.023 (Vernon's 1988) (App. Vol. III, p. 106a.)

The Texas Court Of Appeals Rejected Respondents' Jurisdictional Arguments In This Case.

All of Respondents' arguments regarding jurisdiction and standing issues were raised by Respondents in their Brief to the Court of Appeals. These reply points of error were incorporated into Respondents' First Cross Point No. 1, asserting that Petitioners' constitutional arguments were brought frivolously and

seeking to have the court impose attorney's fees. These arguments were addressed and rejected by the Texas Court of Appeals when it overruled Respondents' Cross Points of Error on those issues (App. Vol. I, p. 17a.) Since the state courts declined to acknowledge Respondents' claims that Petitioners' constitutional challenges were infirm on jurisdictional grounds, those same claims do not present any barrier to this Court's jurisdiction to consider Petitioners' constitutional challenges here. These types of jurisdictional infirmities are analogous to those asserted against the Petitioner in *Orr v. Orr*, 440 U.S. 268, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979), which this Court overruled.

Petitioners Have A Direct Interest In The Outcome Of This Case; If The Court Of Appeal's Decision Stands, Petitioners Will Not Be Able To Enforce The Laws They Are Legally Bound To Uphold.

Petitioners have statutory duties under the *Property Tax Code* to ensure that exemptions are granted properly and in accordance with the law. *Tex. Tax Code Ann.* §§11.43(h)(i) (Vernon Supp. 1994) (App. Vol. III, p. 104a), 11.45(a) (Vernon Supp. 1994) (App. Vol. II, p. 102a) and 41.01(5) (Vernon Supp. 1994) (App. Vol. III, p. 105a.) Petitioners' representatives are required to take an oath to uphold the State and Federal Constitutions. *Tex. Const. art. XVI, §1* (App. Vol. III, pp. 103a-104a.) Further, Petitioners are specifically given the right to enforce the provisions of the property tax laws through the courts. §42.28 of the *Tex. Tax Code Ann.* (Vernon 1992) (App. Vol. III, p. 106a.) Petitioners, as a result of their statutorily imposed duties are directly affected by the outcome of this case. If the decision of the Texas Court of Appeals is allowed to stand, Petitioners will be unable to enforce the state's property tax exemption statutes for religious properties in a manner consistent with First Amendment principles.

This Court and Circuit Courts have recognized that, in certain instances, political subdivisions do have standing to challenge the constitutionality of a state statute or its application when they are directly affected in their ability to enforce or carry out their statutory and constitutional duties. *Board of Education v. Allen*, 392 U.S. 236, 88 S.Ct. 1923 (1968); *Akron Board of*

Education v. State Board of Education, 490 F.2d 1285 (6th Cir. 1974); *Rogers v. Brockette*, 588 F.2d 1057 (5th Cir. 1979). (applying general principles of federal standing requirements to a Texas school district, and distinguishing *Williams v. Mayor of Baltimore*, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933); *City of Newark v. New Jersey*, 262 U.S. 192, 43 S.Ct. 539, 67 L.Ed. 943 (1923); *Trenton v. New Jersey*, 262 U.S. 182, 43 S.Ct. 534, 67 L.Ed. 937 (1923) line of cases and descendent cases of *Trustees of Dartmouth College v. Woodward*, 174 U.S. (4 Wheat.) 518, 4 L.Ed. 629 (1819), cited in *Respondents' Brief in Opposition* at pg. 5).

Here, Petitioners are involved in an actual controversy which directly affects their ability to perform their statutory duties in conformance with the laws they are charged with enforcing. Therefore, Petitioners have a "personal stake" in the outcome of this litigation.

This Court Has Jurisdiction To Review State Court Decisions Which Interpret Federal Questions Of Law In A Manner Repugnant To The Constitution.

Petitioners, as noted in their *Petition for Certiorari* and the Appendices attached thereto, properly raised their federal questions in the trial court and brought these questions forward at every stage of the appellate process. These federal questions were specifically addressed by the Texas Court of Appeals on remand by the Texas Supreme Court. As stated in *Raley v. State*, 360 U.S. 423, 436, 79 S.Ct. 1257, 1265 (1959), there can be no question as to the proper preservation of a federal claim when the highest state court passes on it. Further, even if it could be said Petitioners failed to meet federal standing requirements in the state court, this Court would still have grounds to review this case. See, *Asarco, Inc. v. Kadish*, 490 U.S. 605, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989), holding that this court may exercise federal jurisdiction where the lower court's judgment causes direct injury to the parties who petition for review and the requisites of a case or controversy are met. Id. at 623-624.

CONCLUSION

Petitioners have met all of the procedural and jurisdictional prerequisites for this Court to grant *Certiorari* on the federal questions presented. The Texas Court of Appeals failed to properly apply the standards in *Walz v. Tax Commission*, 397 U.S. 664 (1970). Consequently, the decision of the Court of Appeals conflicts with *Walz*, *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971) and *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 109 S.Ct. 890, 103 L.Ed.2d 1 (1989). On accepting review, this Court will have an opportunity to restrain religious organizations from using *Walz* and the First Amendment as authority to engage in commercial activities without any tax obligations; an opportunity denied this Court in *Diffenderfer v. Central Baptist Church of Miami, Fla., Inc.*, 316 F. Supp. 1116 (S.D. Fla. 1970) *cert. withdrawn* 404 U.S. 412, 92 S.Ct. 574, 30 L.Ed.2d 567 (1972).

Respectfully Submitted,

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Constitution of the State of Texas. Article XVI, §1. Official Oath.

Sec. 1. (a) Members of the Legislature, and all other elected officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

(b) Each member of the Legislature and all other elected officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:

"I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected so help me God."

(c) The Secretary of State, and all other appointed officers, before entering upon the duties of their offices, shall take the following Oath or Affirmation:

"I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

(d) The Secretary of State, and all other appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:

"I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, or promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God."

(e) Members of the Legislature and all other elected officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section.

(f) The Secretary of State and all other appointed officers shall file the signed statement required by Subsection (d) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (c) of this section.

Vernon's Texas Codes Ann. Tax Code, Title 1
§ 11.43. Application for Exemption

(h) If the chief appraiser learns of any reason indicating that an exemption previously allowed should be canceled, he shall investigate. If he determines that the property should not be exempt, he shall cancel the exemption and deliver written notice of the cancellation within five days after the date makes the cancellation.

(i) If the chief appraiser discovers that an exemption that is not required to be claimed annually has been erroneously allowed in any one of the five preceding years, the chief appraiser shall add the property or appraised value that was erroneously exempted for each year to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation. If an exemption that was erroneously allowed did not apply to all taxing units in which the property was located, the chief appraiser shall note on the appraisal records, for each prior year, the taxing units that gave the exemption and are entitled to impose taxes on the property or value that escaped taxation.

Vernon's Texas Codes Ann. Tax Code, Title 1
§ 41.01. Duties of Appraisal Review Board

The appraisal review board shall:

(1) determine protests initiated by property owners;

(2) determine challenges initiated by taxing units;

(3) correct clerical errors in the appraisal records and the appraisal rolls;

(4) act on motions to correct appraisal rolls under Section 25.25;

(5) determine whether an exemption or a partial exemption is improperly granted and whether land is improperly granted appraisal as provided by Subchapter C, D, or E, Chapter 23; and (footnote omitted)

(6) take any other action or make any other determination that this title specifically authorizes or requires.

Vernon's Texas Codes Ann. Tax Code, Title 1
§ 42.09. Remedies Exclusive.

(a) Except as provided by Subsection (b) of this section, procedures prescribed by this title for adjudication of the grounds of protest authorized by this title are exclusive, and a property owner may not raise any of those grounds:

(1) in defense to a suit to enforce collection of delinquent taxes; or

(2) as a basis of a claim for relief in a suit by the property owner to arrest or prevent the tax collection process or to obtain a refund of taxes paid.

(b) A person against whom a suit to collect a delinquent property tax is filed may plead as an affirmative defense:

(1) if the suit is to enforce personal liability for the tax, that the defendant did not own the property on which the tax was imposed on January 1 of the year for which the tax was imposed; or

(2) if the suit is to foreclose a lien securing the payment of a tax on real property, that the property was not located within the boundaries of the taxing unit seeking to foreclose the lien on January 1 of the year for which the tax was imposed.

(c) for purposes of this section, "suit" includes a counterclaim, cross-claim, or other claim filed in the course of a lawsuit.

Vernon's Texas Codes Ann. Tax Code, Title 1
§ 42.28. Appeal of District Court Judgment

A party may appeal the final judgment of the district court as provided by law for appeal of civil suits generally, except that an appeal bond is not required of the chief appraiser, the county, the comptroller, or the commissioners court.

Vernon's Texas Codes Ann. Government, Title 3
Chapter 311, §311.021. Intention in Enactment of Statutes

In enacting a statute, it is presumed that:

(1) compliance with the constitutions of this state and the United States is intended;

(2) the entire statute is intended to be effective;

(3) a just and reasonable result is intended;

(4) a result feasible of execution is intended; and

(5) public interest is favored over any private interest.

Vernon's Texas Codes Ann. Government, Title 3
Chapter 311, § 311.023. Statute Construction Aids

In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

(1) object sought to be attained;

(2) circumstances under which the statute was enacted;

(3) legislative history;

(4) common law or former statutory provisions, including laws on the same or similar subjects;

(5) consequences of a particular construction;

(6) administrative construction of the statute; and

(7) title (caption), preamble, and emergency provision.